

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON ENERGY AND TELECOMMUNICATIONS**

**Call to Order:** By **CHAIRMAN MACK COLE**, on April 4, 2001 at 3:30 P.M., in Room 317 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Mack Cole, Chairman (R)  
Sen. Royal Johnson, Vice Chairman (R)  
Sen. Steve Doherty (D)  
Sen. Alvin Ellis Jr. (R)  
Sen. Mike Halligan (D)  
Sen. Bea McCarthy (D)  
Sen. Walter McNutt (R)  
Sen. Don Ryan (D)  
Sen. Corey Stapleton (R)  
Sen. Mike Taylor (R)  
Sen. Tom Zook (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Todd Everts, Legislative Branch  
Marion Mood, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 640, 4/3/2001

Executive Action: HB 643

**HEARING ON HB 640**

**Sponsor:** REP. DAN MCGEE, HD 21, LAUREL

**Proponents:** Brad Molnar, People of Montana  
Gary Feland, self  
Alec Hanson, MT League of Cities & Towns  
Tom Daubert, Ash Grove Cement Co.  
Russ Ritter, MRI and Washington Construction  
Jerry Driscoll, MT State Building & Construction  
Trades Council

**Opponents:** Ken Morrison, PPL Montana  
Patrick Judge, MEIC  
Matthew Leow, MontPIRG

**Opening Statement by Sponsor:**

REP. DAN MCGEE, HD 21, LAUREL, opened by saying that the purpose of HB 640 was to stimulate economic development and provide incentives for generation development for Montana as well as provide for affordable electric rates. He explained that Section (1) provided for long-term contracts for Montana electrical energy generators who supply Montanans at a current earning of 9.5%, with the PSC determining the cost of production. Section (2) dealt with conservation measures, and also stipulated that if a customer no longer needed the supply, it had to be offered to other Montana customers at the existing contract price before it could be offered to out-of-state customers. Another provision was for the Board of Examiners to issue general obligation bonds in the amount of \$400 million to be used by the state to purchase the necessary power for large customers, or to purchase or invest in a plant to generate electricity to large customers. The debt service payments on the bonds or the power purchased with bond proceeds were payable from the account provided in the electrical energy producers license tax. HB 640 also provided for the creation of an office for energy director to oversee energy generation and consumption. He went on to say that low interest loans extended by the Board of Investments were primarily for Montana generators, pipelines, and transmission facilities; these could also be constructed outside Montana, provided they purchased coal from Montana. He referred to page 3, lines 19 through 25; these had been stricken and were replaced by an amendment to allow the Board of Investments to direct the issuance of \$500 million in general obligation bonds in addition to the \$400 million mentioned above. There were also provisions for incentives, tax holidays and penalties, all geared to

stimulate electrical generation and sale of electricity in the state. He went on to read various parts of the bill.

**Proponents' Testimony:**

**Brad Molnar, People of Montana**, started out by talking about the role of the default supplier, saying that when some of the large industrials left the system, they were guaranteed the right of choice, enabling them to come back because the default supplier was to be there for all customers. He stated that this bill was large, but encompassed three main issues, those being a short-term solution to put large industrials' employees back to work; a mid-term solution to protect Montana's consumers from a California situation; and the long-term solution in form of generation development. He felt that the building of infrastructure such as transmission facilities were of primary concern to get Montana to be energy self-sufficient. He went on to say that in 1982, from gas, oil, and coal on state lands, Montana generated just under \$50 million; in 2000, it was \$6 million, and that trend needed to be reversed, especially in light of the fact that Montana has a 3,000 year supply of coal reserves. He believed that the energy crisis was not our crisis but our opportunity as energy exporters. He pointed to North Dakota whose number one export was energy; that state spent \$700,000 to properly position itself in the market place. He was certain that people would build generating facilities in this state if given incentives, and if the facility siting act as well as MEPA were changed; his goals were to protect the Montana rate payer and create stability. Lastly, he predicted that if we did not give Gov. Martz the tools for negotiation, we would lose. In closing, he submitted **EXHIBIT (ens76a01)**.

**Gary Feland, self**, rose in support of HB 640 because of the looming California market. He felt HB 640 was a good bill for economic development and predicted there would be some opponents because of the tax provisions contained therein. He said these would not apply as long as just and reasonable rates were offered which really was the crux of the issue. He felt we needed some decent negotiation because the alternative of 7 cent power for ten years was definitely not the answer. Acting on a request by **SEN. MIKE HALLIGAN** from a previous meeting, he handed in **EXHIBIT (ens76a02)**, a legal analysis with regards to HB 632.

**Alec Hanson, MT League of Cities & Towns**, stated he was also a member of the governor's Advisory Council on electricity and pricing. He told the committee that former **REP. MOLNAR** had discussed this bill with them from the beginning, and he felt it contained many beneficial ideas. He surmised that municipal

governments were heavy users of energy, and his league calculated that for every one cent increase in energy rates, it cost their aggregation pool \$1 million; MPC's recent RFP's would present an increase of \$4 to \$6 million per year. He felt HB 640 encouraged new generation committed to the state and put together a package that would protect Montana from the drastic circumstances which are occurring in California.

**Tom Daubert, Ash Grove Cement Co.**, concurred with previous testimony and added that **John Bloomquist, MT Stock Growers Assn.**, also supported HB 640.

**{Tape : 1; Side : B}**

**Russ Ritter, MRI and Washington Construction**, started by saying his company was still looking for 45 megawatts of power which would enable them to put 325 people back to work. He felt that no single bill in the present mix could solve the state's energy problem, but each one had strong points and, if melded together, could present a solution. He pointed to the many million tons of coal the state was about to inherit as a result of an agreement made by the Racicot administration; this was a payback for the loss of mining activity near Yellowstone Park. He felt that developing some of that coal presented a great economic opportunity; the proceeds would help the state's tax base as well as its schools. Furthermore, he felt encouraged by the passage of the MEPA legislation as well as the Major Facility Siting Act, saying that without it, his company would not consider taking on the development of the coal fields because it would have meant many more years of permitting. Lastly, he felt HB 640 would help solve the immediate problem in bringing the Butte mine back into operation.

**Jerry Driscoll, MT State Building and Construction Trades Council**, expressed hope that HB 640 would encourage the building of new generation facilities which might even allow the exporting of energy some day.

#### **Opponents' Testimony:**

**Ken Morrison, PPL Montana**, stated that the objections voiced by his client with regards to earlier bills also applied to HB 640. He felt that the bill's tax portion seemed to be directed at PPL Montana; the generation tax proposal would raise the tax on exempt wholesale generators 300 times, and the company's property tax would double. He urged the committee not to pass this bill.

**Patrick Judge, MEIC**, also rose in opposition of HB 640, saying that they did agree, in principle, that Montana should have low cost, affordable electricity, that Montana's generating resources

should be dedicated to Montana alone, and that they believed in self-sufficient generation but felt this bill was not the way to achieve these goals. They opposed the idea of extending cash incentives to new fossil-fired generation, and he felt all it did was bail out large industrials. He charged that the monies set aside for the loans could be better spent in finding a more equitable and sound solution, such as purchasing the state's hydro-electric systems.

**Matthew Leow, MontPIRG**, also felt that this bill was not a positive vehicle for solving Montana's energy problems. The conservation/alternative energy provisions did not contain concrete definitions and were too broad, and he would not accept a diesel generator as an alternative energy source because it was a worse polluter than a coal-fired power plant. He called the tax holiday for new generation corporate welfare, and said it was obvious that this bill intended to increase coal production in developing coal-fired generation plants which sparked many environmental concerns. He questioned the feasibility because there was no energy market bordering the state, and transmission lines were very expensive. He closed by saying that there are other, much more deserving bills in the mix.

#### Informational Testimony:

**Debbie Smith, Natural Resources Defense Council**, referred to Section (4) on page 3 which dealt with the office of an energy director; this concept was discussed by the Governor's Advisory Energy Council who recommended that a task force be set up to develop energy policy. She felt that HB 640 was the only bill that provided for this, and stated that it was important to elevate the energy issue to the executive branch.

#### Questions from Committee Members and Responses:

**SEN. MIKE TAYLOR**, after discussing salaries for the Northwest Power Planning Council and the PSC, asked what the intent of the bill was with regards to the energy director. **Brad Molnar** replied he had originally asked for a two person staff, one would be half-time FTE to the Department of Commerce and half-time FTE to the PSC, and the other in line with the PSC or Power Planning Council, so they could draw on both resources to perform this function. Now, though, this task force would meld into the governor's office of economic development, assuming that bill would pass, and they would determine compensation and function.

**SEN. TAYLOR** asked what the tax exemptions would be which the PSC was in charge of, how long they would be extended, and also why the number of \$500 million was picked. **Brad Molnar** replied that currently, the generation supplying Montana was guaranteed a 9.5%

rate of return to slow their rate of depreciation; this would allow them to disrupt their income tax, if necessary, to maintain a 9.5% profit. The increase in generation tax applied only if they did not supply Montanans at 9.5%. He maintained that the PSC had the technical expertise to determine what the rate of return was and what the true expenses were. The \$500 million was added in the House Appropriations Committee in case there was no supplier in Montana committed to the state; they would go across the border and buy a power plant on the same grid in order to supply Montana. He had started out with \$400 million in bonds if they did not come up with a block of electricity from Montana's large industrials upon signing of the bill at 3 cents per kilowatt hour. If they could not provide it for 3 cents, they would go out and buy it and recover the cost with a tax.

**SEN. TOM ZOOK** referred to Section (3) dealing with the Board of Investors issuing general obligation bonds up to \$400 million, and in Section (5), it said the Board of Examiners could issue bonds up to \$500 in bonds, and asked for comments. **Brad Molnar** replied that originally, it had provided for \$100 million per year over ten years which was changed to \$500 million and five years, with the remaining \$500 million being put aside in case it was needed up front. **SEN. ZOOK** asked if this bonding proposal was discussed with the Bond Council. **Brad Molnar** stated that **REP. DAVE LEWIS** had written the amendment and had stated that the general obligation bonds would be dependent upon the credit worthiness of the project, and the people who would be the recipients. **SEN. ZOOK** charged that all this was based on assumptions, and he believed \$900 million outstanding in bonds would present a problem. **Mr. Molnar** hoped it would not be one, but it would be the Board's responsibility.

*{Tape : 2; Side : A}*

**SEN. STEVE DOHERTY** wondered if the state had enough money to loan out \$500 million. **Mr. Molnar** replied that it was not a matter of having the money; he had walked away from tapping the coal trust which was money used in general obligation bonds. **SEN. DOHERTY** referred to Section (5) in which the Board of Investments would make a loan to an entity to construct a facility outside the state of Montana as long as they used Montana coal, saying he did not understand the reason behind that. **Mr. Molnar** pointed to the provision that says preference must be given to projects located in Montana; if there were no takers to build in the state, for whatever reason, we could still benefit by developing a coal market. This market was largely untapped, and he saw a great opportunity for the state. He also proclaimed that a 250 megawatt plant created 1300 jobs, and he was looking to have four or five of those going in the state. He added that if there were no takers in Montana, we should go to markets outside; the

majority of plants being built now do not want to deal with transmission lines, they would rather just build on the outskirts of Denver or Los Angeles.

**SEN. ZOOK** asked if he had understood correctly that there was not an energy market nearby. **Matthew Leow** responded that there was not a large market. **SEN. ZOOK** asserted that Gillette, WY, was only ninety miles from the border, and referred to the Black Hills Energy Co. which already owned a coal mine near Gillette and was planning to build a generating plant there, with the power going to Denver, and they were also looking at Cheyenne.

**SEN. TAYLOR** had a question for someone from the Board of Investments, referencing Section (5) where it said that the Board can make low interest loans up to \$100 million a year for five years, and then on line 25, it gives an amount up to \$500 million. **Peter Blouke** replied that it was his understanding that Section (5) was predicated on their receiving \$500 million in general obligation bonds from the Board of Examiners which would put none of the coal trust at risk. **SEN. TAYLOR** asked if he agreed that it could be a total of \$900 million. **Mr. Blouke** confirmed this. **SEN. TAYLOR** wondered if he knew how much money we invested out of state. **Mr. Blouke** said, looking at the pension fund, it had to be several billions.

**SEN. ROYAL JOHNSON** asked if **Mr. Molnar** knew what public purpose bonds were. **Mr. Molnar** said he did not. **SEN. JOHNSON** asked the same question of **Bob Nelson, Consumer Council**, who said he also was not a bond expert. **SEN. JOHNSON** explained that these are issued for the benefit of the state of Montana and felt that the bonds mentioned here had the same purpose. He went on to say that the federal government set a limit on those bonds, and right now this was \$150 million, to be raised to \$175 million by next year, and then to \$200 million. These bonds were being used by the Board of Housing and the Board of Examiners, among others, and he pointed out that the federal government allowed a limited number of these bonds to be issued in Montana, and we were almost at the limit. He did not believe that we could do what HB 640 proposed if these bonds were in fact public purpose/general obligation bonds. **Brad Molnar** was not familiar with this concept but doubted these were public purpose bonds; he believed they were general obligation bonds.

**Closing by Sponsor:**

**CHAIRMAN MACK COLE** closed for the sponsor.

**EXECUTIVE ACTION ON HB 643**

**Motion:** SEN. DOHERTY moved that HB 643 BE CONCURRED IN.

**Discussion:**

SEN. DOHERTY stated that the state issued bonds and had full authority to set conditions; HB 643, in his opinion, merely set up the authority to allow the state to issue the bonds but whether it did or what conditions it put on the bonds was still the state's sole responsibility. He asked if **Peter Blouke** had looked at that issue in the bill and asked him to comment. **Mr. Blouke** agreed with SEN. DOHERTY'S view, saying the bill provided the structure to allow the Board to evaluate requests relative to the wind generation. He asserted that the Board would contact the state's Bond Council to check the legality, whether it was an industrial revenue or a tax exempt bond, the issues that may arise with regards to the relationship between the tribal governments and the state. He assured the committee that there would be a host of lawyers looking at this before any final steps were taken, and he said that the Board would have to find somebody willing to buy the bonds, predicated by the credibility of the project.

SEN. ZOOK asked if this was not something he would do now. **Mr. Blouke** admitted he could, there was a section in statute defining economic development bonding, and wind generation was included in it.

SEN. TAYLOR presumed that bonding would not be let if there was no recourse in state courts. **Mr. Blouke** answered that it depended on how the project was structured; whether the tribe owned and operated the plant, or whether it was contracted; there were a lot of factors to be considered, and based upon a perceived risk, the interest rates would simply go up. SEN. TAYLOR charged that there was an impact on local schools with this taxation being exempt, and he wondered if the fee land mentioned in the bill would also be exempt. He could not see where it said that in return for the low interest rates and tax incentives, the power had to be sold at a lower rate, or even confined for sale in the state.

CHAIRMAN COLE commented that there was a lot of fee land on the Blackfeet reservation, and about 38,000 acres of private fee land. He recounted court cases on other reservations being taxed, and it was decided this was not legal unless it was tribal land, and he agreed that there were some concerns.



**SEN. MIKE HALLIGAN** asked if there were any sovereignty issues associated with a default with regards to the bonds. **Mr. Blouke** explained that in this process, the state was a conduit of power and whoever purchased the bonds would be the one going after getting default, the state would not get involved in it. That was why, in order to sell the bonds, the buyer would have to find someone with sufficient confidence in the project. **SEN. HALLIGAN** inquired if the Board had certain purchasers in mind when they issued the bonds so they could be part of structuring the contract. **Mr. Blouke** confirmed that at the very least, there would be bond counsel and company attorneys involved in the various stages.

**SEN. DOHERTY** claimed that the bond issue was fairly clear but pointed out that if a project was to be built by a tribe entirely on trust lands on a reservation, the state could not tax it. In trying to attract capital from outside the state, the tribes would be looking at partnering with private enterprise; they, in turn, would want to be protected. As it stood now, the school districts were getting nothing, but he felt that impact was taken care of in Section (2) where it said that the investors had to deal with the tribal government, signing an employment contract regarding training and employment of tribal members; this would guarantee jobs in an area with high unemployment which would lessen the strain on social services, so there would be a trade-off. He felt strongly about creating this industry on the reservation and charged that these incentives were needed to attract investors.

**SEN. TAYLOR** asked if **SEN. DOHERTY** could add an amendment to the bill, to have the state involved in issuing the bonds so that there would be access to the state courts if there was a default. **SEN. DOHERTY** did not see the necessity because the bonding authority would write the conditions for the bonds; in case of a default, he would advise involvement of the federal courts anyway.

**SEN. ZOOK** wondered why this bill was needed. **SEN. DOHERTY** responded that there were potential projects which could use the tax benefits described therein to make them viable. **SEN. ZOOK**, pointing to the fact that no taxes could be levied on the reservations, asked if he meant private investors when he talked about people wanting these tax incentives. **SEN. DOHERTY** replied that the problem was that there were trust lands intermixed with fee lands, and the project could not be sited on trust lands because then the state would have no tax benefit. In order to make it profitable for the investor, it would have to be sited on the fee lands where the state had jurisdiction so they could get the full tax benefit. **SEN. ZOOK** asked if he could support

building transmission lines and selling power out of state if there was enough development to justify this. **SEN. DOHERTY** said he was not aware that the capacity would be such that it required building transmission lines outside the state. **SEN. ZOOK** reminded him that this was in the title of the bill. **SEN. DOHERTY** replied this may be but the capacity of the two projects was relatively small.

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**SEN. ZOOK** professed that he liked the idea of wind generation but he was not fond of some of the ideas presented in the bill.

**SEN. WALTER MCNUTT** felt that there had been other tax moratorium bills, and that they tended to have a trigger such as requiring a percentage of the energy to be used in state, and that was missing here. He believed this should be a requirement in return for the tax incentives. **SEN. DOHERTY** replied that the trigger in this bill was that the plant actually had to be built and employ people.

**SEN. MCNUTT** called for the question.

**Vote:** Motion failed 4-7 with Doherty, Halligan, McCarthy, and Ryan voting aye. There were proxies for Sens. Ellis, Stapleton, Ryan, and McCarthy.

**ADJOURNMENT**

Adjournment: 5:00 P.M.

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SEN. MACK COLE, Chairman

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MARION MOOD, Secretary

MC/MM

**EXHIBIT (ens76aad)**